

IN THE SENATE

SENATE BILL NO. 1341

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO THE SEXUAL OFFENDER REGISTRATION ACT; AMENDING SECTION 18-8304, IDAHO CODE, TO REMOVE PROVISIONS RELATING TO CERTAIN EXEMPTIONS AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING CHAPTER 83, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-8310A, IDAHO CODE, TO PROVIDE A PETITION PROCESS FOR CERTAIN PERSONS TO BE EXEMPTED FROM THE DUTY TO REGISTER AS A SEXUAL OFFENDER, TO GRANT THE DISTRICT COURT THE AUTHORITY TO EXEMPT CERTAIN PERSONS FROM THE DUTY TO REGISTER AS A SEXUAL OFFENDER AND TO ALLOW FOR EXPUNGEMENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-8304, Idaho Code, be, and the same is hereby amended to read as follows:

18-8304. APPLICATION OF CHAPTER -- RULEMAKING AUTHORITY. (1) The provisions of this chapter shall apply to any person who:

(a) On or after July 1, 1993, is convicted of the crime, or an attempt, a solicitation, or a conspiracy to commit a crime provided for in section 18-909 (assault with intent to commit rape, infamous crime against nature, or lewd and lascivious conduct with a minor, but excluding mayhem, murder or robbery), 18-911 (battery with intent to commit rape, infamous crime against nature, or lewd and lascivious conduct with a minor, but excluding mayhem, murder or robbery), 18-919 (sexual exploitation by a medical care provider), 18-1505B (sexual abuse and exploitation of a vulnerable adult), 18-1506 (sexual abuse of a child under sixteen years of age), 18-1506A (ritualized abuse of a child), 18-1507 (sexual exploitation of a child), 18-1507A (possession of sexually exploitative material for other than a commercial purpose), 18-1508 (lewd conduct with a minor child), 18-1508A (sexual battery of a minor child sixteen or seventeen years of age), 18-1509A (enticing a child over the internet), 18-4003(d) (murder committed in perpetration of rape), 18-4116 (indecent exposure, but excluding a misdemeanor conviction), 18-4502 (first degree kidnapping committed for the purpose of rape, committing the infamous crime against nature or for committing any lewd and lascivious act upon any child under the age of sixteen, or for purposes of sexual gratification or arousal), 18-4503 (second degree kidnapping where the victim is an unrelated minor child), 18-5605 (detention for prostitution), 18-5609 (inducing person under eighteen years of age into prostitution), 18-5611 (inducing person under eighteen years of age to patronize a prostitute), 18-6101 (rape, but excluding 18-6101(1) where the defendant is eighteen years of age or where the defendant is exempted under subsection (4) of this section), 18-6108 (male rape, but excluding 18-6108(1) where the defendant is eighteen years of age or where the defendant is exempted under subsection (4) of

~~this section~~), 18-6110 (sexual contact with a prisoner), 18-6602 (incest), 18-6605 (crime against nature), 18-6608 (forcible sexual penetration by use of a foreign object), 18-6609 (video voyeurism where the victim is a minor or upon a second or subsequent conviction), 18-7804 (if the racketeering act involves kidnapping of a minor) or 18-8602(1), Idaho Code, (sex trafficking).

(b) On or after July 1, 1993, has been convicted of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another jurisdiction or who has a foreign conviction that is substantially equivalent to the offenses listed in subsection (1) (a) of this section and enters this state to establish residence or for employment purposes or to attend, on a full-time or part-time basis, any public or private educational institution including any secondary school, trade or professional institution or institution of higher education.

(c) Has been convicted of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another jurisdiction, including military courts, that is substantially equivalent to the offenses listed in subsection (1) (a) of this section and was required to register as a sex offender in any other state or jurisdiction when he established residency in Idaho.

(d) Pleads guilty to or has been found guilty of a crime covered in this chapter prior to July 1, 1993, and the person, as a result of the offense, is incarcerated in a county jail facility or a penal facility or is under probation or parole supervision, on or after July 1, 1993.

(e) Is a nonresident regularly employed or working in Idaho or is a student in the state of Idaho and was convicted, found guilty or pleaded guilty to a crime covered by this chapter and, as a result of such conviction, finding or plea, is required to register in his state of residence.

(2) An offender shall not be required to comply with the registration provisions of this chapter while incarcerated in a correctional institution of the department of correction, a county jail facility, committed to the department of juvenile corrections or committed to a mental health institution of the department of health and welfare.

(3) A conviction for purposes of this chapter means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment.

~~(4) When a defendant is convicted of rape under section 18-6101(2) or 18-6108(2), Idaho Code, and at the time of the offense the defendant is nineteen (19) or twenty (20) years of age and not more than three (3) years older than the victim of the rape, the court may order that the defendant is exempt from the requirements of this chapter upon a finding by the court that:~~

~~(a) All parties have stipulated to the exemption; or~~

~~(b) The defendant has demonstrated by clear and convincing evidence that he is not a risk to commit another crime identified in subsection (1) of this section and in the case there were no allegations by the victim of any violation of section 18-6101(3) through (9) or 18-6108(3) through (7), Idaho Code.~~

~~(5) The department shall have authority to promulgate rules to implement the provisions of this chapter.~~

1 SECTION 2. That Chapter 83, Title 18, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
3 ignated as Section 18-8310A, Idaho Code, and to read as follows:

4 18-8310A. DISTRICT COURT TO RELEASE FROM REGISTRATION REQUIREMENTS --
5 EXPUNGEMENT. Any person who was convicted under section 18-6101 1., Idaho
6 Code, as it existed before July 1, 2010, where such person would not have been
7 convicted under section 18-6101(1) or (2), Idaho Code, may petition the dis-
8 trict court for a determination to be exempted from the duty to register as a
9 sexual offender. If the district court finds that such person would not have
10 been convicted under section 18-6101(1) or (2), Idaho Code, then the dis-
11 trict court may exempt the petitioner from the duty to register as a sexual
12 offender and may order that any information regarding the petitioner be ex-
13 punged from the central registry. In the petition, the petitioner shall:

14 (1) Provide a certified copy of the judgment of conviction which caused
15 the petitioner to report as a sexual offender; and

16 (2) Provide an affidavit that states the following:

17 (a) The specific underlying facts of petitioner's conviction and that
18 such facts do not come within the provisions of section 18-6101(1) or
19 (2), Idaho Code;

20 (b) The petitioner does not have a criminal charge pending nor is the
21 petitioner knowingly under criminal investigation for any crime iden-
22 tified in section 18-8304, Idaho Code; and

23 (c) The petitioner is not required to register as a sexual offender for
24 any other reason set forth in this chapter.